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raised." Action was brought against the bank to recover the amount paid on the forged checks. *Held,* that a defense of failure to notify under the provision given above must be pleaded and proved in order to be available, and that it is not a condition precedent to be alleged as a part of a cause of action by a depositor, suing his bank for a deposit depleted by the payment of forged checks, but is in fact a statute of limitations. *Shattuck* v. *Guardian Trust Co. of New York* (1911), 130 N. Y. Supp. 658.

No other case deciding the provision in question has been found . CLARKE, SCOTT, and INGRAHAM, JJ., held it to be a statute of limitations on the ground that in nature it was similar to the statute of frauds, the statute against usury and that against betting and gaming, which have been held to be statutes of limitations, and are not available to a party unless specifically pleaded. *Crane* v. *Powell,* 139 N. Y. 379, 34 N. E. 911; *Porter* v. *Worsmer,* 94 N. Y. 431, 450; *Hamer* v. *Sidway,* 124 N. Y. 538, 548; *Wells* v. *Monihan,* 129 N. Y. 161. MCLAUGHLIN and DOWLING, JJ., were of the opinion that it was more analogous to the provisions in the standard policy of insurance prescribed by the statute that "no action can be maintained upon such policy unless proofs of loss are served within a specified time, which it is settled is a condition precedent to be alleged and proved by the plaintiff."

BANKS AND BANKING — PAYMENT OF CHECK — FORGED INDORSEMENTS. — P. drew a check on his local bank of deposit in favor of R, whose place of business was 48 Walker St., New York. Through mistake he addressed the letter. in which the check was enclosed, to 48 Walker St., Cleveland, Ohio, instead of 48 Walker St., New York. The letter reached Cleveland, and the mail carrier found no one of that name on Walker St. of that city, but found a man whose name was R, on Henry Street, to whom the carrier delivered the letter. He opened it and took possession of the check, and by indorsing the name R on the back thereof obtained the cash from an acquaintance, who indorsed and deposited said check in his bank of deposit in Cleveland. After several indorsements it was presented to the drawee bank, and paid by it, and charged to P's account, it having no knowledge of said mistake in addressing the letter. P brought suit against the drawee bank to recover the amount of the check so charged to his account. *Held,* he was not entitled to recover. *S. Weisberger Co.* v. *Barberton Savings Bank Co.* (Ohio 1911) 95 N. E. 379.

The authorities in this country are uniform in holding that a bank is bound to see that the payee's signature is genuine, and is liable for paying on a forged check. *Jordan Marsh Co.* v. *National Shawmut Bank,* 201 Mass. 397, 87 N. E. 740; *Bank of Brit. North America* v. *Merchants Nat'l Bank,* 91 N. Y. 106; *Trust Co. of America* v. *Hamilton Bank of New York City,* 127 App. Div. 515, 112 N. Y. Supp. 84; *Union Biscuit Co.* v. *Springfield Grocer Co.,* 143 Mo. App. 300, 126 S. W. 996; *Hardy* v. *Chesapeake Bank,* 51 Md. 562, 34 Am. Rep. 325; *West Philadelphia Bank* v. *Green,* 3 Penny. 456; *Hatton* v. *Holmes,* 97 Cal. 208, 31 Pac. 1131; *Henderson Trust Co.* v. *Ragan,* 21 Ky. Law Rep. 346, 52 S. W. 848. The general rule has been qualified. The bank is not liable for paying a check on a forged indorsement, if the depositor is in fault. *Snyder* v. *Corn Exchange National Bank,* 221 Pa. 599. The

courts do not agree as to the question under what circumstances the depositor may be considered to be in fault so as to relieve the bank from liability. Negligence of a depositor, unless the direct and proximate cause of the payment of a check bearing the forged indorsement of a payee, would not relieve the bank from liability to the depositor therefor. *Jordan Marsh Co.* v. *National Shawmut Bank,* 201 Mass. 397. In the following cases the bank was held liable although the payment of the forged check was partly due to the negligence of the depositor. *Mackintosh* v. *Eliot Nat. Bank,* 123 Mass. 393; *Welsh* v. *German-American Bank,* 73 N. Y. 424, 29 Am. Rep. 175; *Harlem Co-Operative Building & Loan Ass'n.* v. *Mercantile Trust Co.* (Com. Pl.) 10 Misc. 680, 31 N. Y. Supp. 790; *National Bank of Va.* v. *Nolting,* 94 Va. 263, 26 S. E. 826. The authorities agree that the bank is bound to see that the payee's signature is genuine. The mere fact that a check is placed in the hands of a wrong person does not relieve the bank of its duty to ascertain the payee's signature. Unless the negligent act of the depositor is of such a nature that it causes the bank to take a forged indorsement for a genuine one, it cannot be said to be the direct and proximate cause of the payment of a forged instrument. But the court in the principal case, ignoring the general rule, gave judgment in favor of the bank on the ground that, "where one of two innocent parties must suffer because of a fraud or forgery, justice imposes the burden upon him who is first at fault and put in operation the power which resulted in the fraud or forgery." However, the court expressly stated that it rested its decision on the peculiar facts of the case. This limitation is important, because the rule invoked by the court to decide the case under discussion can be abused very easily, as some fault on the part of the depositor can generally be found in the case of payment of a forged instrument by the bank, and if it should be allowed to govern the cases of forged checks without any limitation, it would practically take away the protection which the law has now given to depositors, and banks would become less diligent in ascertaining the payee's signature.

CANCELLATION OF INSTRUMENT FOR WANT OF CONSIDERATION—STATUS QUO. —Plaintiff purchased from one of the defendants, Dr. Wo, a restaurant with a lease of the premises. Wo was only a sub-lessee and agreed to have the lease assigned to the plaintiff if the plaintiff would advance $600, the rent due for the balance of the term. Plaintiff so agreed to do and signed the notes for $600. After signing the notes, the owner of the premises and the first lessee refused to assign the lease, and plaintiff resold the restaurant. Being sued on the notes, plaintiff brings action to have the sale rescinded and the notes cancelled. *Held,* that the notes were void, and that their collection should be enjoined, notwithstanding the fact that because of the resale of the restaurant by the plaintiff, the defendant could not be placed in *statu quo. Johnson* v. *Parshley et al.* (Ore. 1911) 117 Pac. 661.

The rule that one seeking to rescind a contract must put or offer to put the other party in *statu quo,* is generally recognized and followed by courts of equity. *Armstrong* v. *Pierson,* 5 Iowa 317; *Lane* v. *Latimer,* 41 Ga. 171. A great many courts have laid down exceptions to this general rule, especial-